

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

UNITES STATES OF AMERICA)	
)	
v.)	CASE NO. 3:05-CR-234-A
)	
TYRONE WHITE)	

MOTION TO DISMISS MULTIPLICATIVE COUNT

COMES NOW the Defendant TYRONE WHITE, by and through his attorney, Julian L. McPhillips, Jr., and respectfully moves this Honorable Court to dismiss either Count 6 or Count 7 of the Indictment (Doc. 1) entered against the defendant, and states:

1. Multiplicity is the charging of a single offense in separate counts of an indictment. United States v. Williams, 93 Fed. Appx. 951, 954 (7th Cir. 2004); *citing* United States v. Conley, 291 F.3d 464,469-70 (7th Cir. 2002); *see also* United States v. Allender, 62 F.3d 909,912 (7th Cir. 1995).

2. In asking whether an indictment is multiplicative, the Court typically asks “whether each count requires proof of a fact which the other does not. If one element is required to prove the offense in one count which is not required to prove the offense in the second count, there is no multiplicity.” United States v. Briscoe, 896 F.2d 1476, 1522 (7th Cir. 1990); *quoting* United States v. Marquardt, 786 F.2d 771, 778 (7th Cir. 1986); *see also* United States v. Conley, 291 F.3d 464, 470 (7th Cir. 2002).

3. In the instant case, Counts 6 and 7 of the Indictment (Doc. 1) are identical, except for the additional words “and accepted” before the word “money” in Count 6.

4. The time frames for Counts 6 and 7 are stated differently, but encompass the same time. Specifically, the government avers that Count 6 occurred “from an unknown date, but beginning in or about April 2005, and occurring up to [sic.] in or about May 2005,” and that Count 7 occurred “from an unknown date, but during or about May 2005.”

5. Because it appears that Counts 6 and 7 are based on the same alleged transaction, one of the two counts should be dismissed.

WHEREFORE, above premises considered, the undersigned prays that this Honorable Court will DISMISS either Count 6 or Count 7 of the Indictment as multiplicative.

RESPECTFULLY SUBMITTED this 15th day of November 2005,

TYRONE WHITE
Defendant

/s/ Julian L. McPhillips, Jr.
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CERTIFICATE OF SERVICE

I certify that, on this date, I have served a copy of the foregoing upon the Government by electronic filing, and by mailing an additional courtesy copy of same to the Government's attorneys at the addresses below:

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